LIBRARY
SUPREME COURT U. S.

FILED
JUN 16 1969
JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1969

NO. [redacted]
246

SAMUEL EUGENE PATTERSON)
)
Petitioner)
)
v)
)
STATE OF INDIANA)
)
Respondent)

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

Palmer K. Ward
919 Electric Bldg.,
Indianapolis, Indiana

Attorney for Petitioner.

I N D E X

	Page
Opinion below	2
Jurisdiction	2
Questions presented	2
Constitutional provisions	3
Statement of the case	3
How the Federal Question was raised	4
Argument	4
Appendix "a"	i
Opinion Supreme Court of Indiana	
Appendix "b"	
Judgment of trial Court	iv

Citations

Wedmore v State, 237 Ind 212, 143 N.E. (2) 649	5
Binder v State, ___ Ind ___, 221 N.E. (2) 886	6
Fourteenth Amendment, Constitution of the United States	3,7

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

NO. _____

SAMUEL EUGENE PATTERSON	)
	)
Petitioner	)
	)
v	)
	)
STATE OF INDIANA	)
	)
Respondent	)

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF INDIANA

Samuel Eugene Patterson, by counsel, Palmer K. Ward, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Indiana in affirming the judgment of the Superior Court of Hamilton County, Indiana, upon his conviction of the crime of Procuring a Female for a House of Prostitution January 30, 1969 and the denial of petitioner's petition for rehearing which was denied on March 19, 1969.

OPINION OF THE SUPREME COURT OF INDIANA

The opinion of the Supreme Court of Indiana is reported at Volume 16 Indiana Decisions, page 404 and is reproduced herein in Appendix "a" attached to and made a part of this petition.

JURISDICTION

1. The judgment of the Supreme Court of Indiana was entered on January 30, 1969.

2. A timely Petition for Rehearing was filed and overruled by the Supreme Court of Indiana on March 19, 1969.

3. The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code, Section 1257 (3).

QUESTIONS PRESENTED

1. Is the denial by the trial Court of a verified petition to require the prosecuting witness to submit to a psychiatric examination prior to her being offerred as a witness, to determine her competency, a denial of due process of law?

CONSTITUTIONAL PROVISIONS

United States Constitution, Fourteenth Amendment:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the priviliges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner was arrested and charged with the offense of procuring a female for a house of prostitution; said affidavit being filed in the Criminal Court of Marion County, Indiana, Division Two on February 23, 1965. The cause was venued to the Superior Court of Hamilton County, Indiana.

On October 16, 1967, upon the verdict of a jury, petitioner was sentenced to the Indiana State Prison for not less than two nor more than ten years and fined

in the sum of $600.00; said judgment being reproduced herein as Appendix "b" to this petition.

Prior to the trial of this cause petitioner filed his verified petition to require the prosecuting witness to submit to a psychiatric examination. The State filed no response to this motion and the Court summarily overruled said petition without a hearing.

HOW THE FEDERAL QUESTION WAS RAISED

The question was raised by the filing of the verified petition to require psychiatric examination of the prosecuting witness prior to trial in the trial court and said motion is found at page 45 of the Transcript. The question was also briefed and argued in the Supreme Court of Indiana.

ARGUMENT

When timely objection is made as to the competency of a prosecuting witness is it a denial of due process of law to overrule said motion without a hearing?

We think so. It was held by the Supreme Court of Indiana in the case of Wedmore v State (1957) 237 Ind 212, 143 N.E. (2) 649 as follows:

> " In this case if timely objection to the competency of the prosecuting witness had been made, it would have been the duty of the court to make such an examination as would satisfy it as to her competency or incompetency. 58 Am. Jur., Witnesses, section 134, p. 101; and section 211, p. 144."

Petitioner did make timely objection to the competency of the prosecuting witness prior to trial in a verified petition which alleged that she was suspected of having a "Sociopathic Personality." The State of Indiana filed no response to this verified petition and the Court overruled it without any hearing prior to trial. Judge ARterburn of the Supreme Court of Indiana in his opinion affirming the conviction of the petitioner disposed of this contention as follows:

" It is also argued under Point

3 that the court erred in overruling a motion to have a psychiatric examination of Judy Kay Vickery, a prosecuting witness. However, the briefs do not forth at any point that any objection was made to the witness testifying on the ground that she was mentally incompetent as a witness when she took the stand. Therefore we find no point raised for our consideration with reference to the testimony of Judy Kay Vickery." (Appendix "a").

The Supreme Court of Indiana in the instant decision has not only failed to follow their own ruling precedents they have also decided this question in a way probably not in accord with applicable decisions of this Court.

It has always been the rule in a criminal case that when a doubt is raised as to the competency of a witness it is the duty of the Court to conduct a careful examination of the witness as to age, capacity and moral and legal accountability.

In the case of Binder v State (1966) ___ Ind ___, 221 N.E.(2) 886 Justice Jackson stated the law in his dissenting opinion as we believe it to be when he stated at page 892:

" I am aware that credibility of a witness is a question for the trier of the facts. But a group of layman cannot make a proper determination of the credibility of a witness such as we have in this case without the assistance of psychiatric testimony. Medical evidence as to the emontional stability and truthfulness of the witness would be of inestimable value if not absolutely necessary. As Wigmore on Evidence, supra, has put it:

' No judge should ever let a sex-offense charge go to the jury unless the female complainant's social history and mental makeup have been examined and testified to by a qualified physician.' "

Since the petitioner in the trial court filed a verified petition to require the prosecuting witness to submit to a psychiatric examination the petitioner did all in his power to bring the matter of the competency of the prosecuting witness to the attention of the trial court. The denial of such examination, when called to the attention, is a denial of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

CONCLUSION

For the reasons herein stated we respectfully pray the Court to issue a Writ of Certiorari to the Supreme Court of Indiana to review their final judgment.

Respectfully submitted,

Palmer K. Ward
919 Electric Bldg.,
Indianapolis, Indiana

Attorney for Petitioner.

Appendix "a".

SAMUEL EUGENE PATTERSON v. STATE OF INDIANA

SUPREME COURT OF INDIANA

No. 1267 S148

January 30, 1969

APPEAL FROM THE HAMILTON SUPERIOR COURT

HON. V. SUE SHIELDS, JUDGE

SYNOPSIS: Appeal from conviction of procuring a female for a house of prostitution. The evidence showed that the defendant met a fifteen year old girl, introduced her to a prostitute who worked for him and who showed the fifteen year old how to operate, that the defendant bought clothes for her and that she performed acts of prostitution in the defendant's home.

The Supreme Court of Indiana, Arterburn, J., affirmed, Jackson and Givan, JJ., concurred in the result. Appellant's brief failed to comply with Rules 2-17(g) and (h) and the evidence was sufficient to sustain the conviction.

APPEAL—Rule 2-17(g). Requires that a summary of the argument precede the major argument. p. 404.

APPEAL—Rule 2-17(h). Requires that the items in the motion for a new trial relied upon as a basis for error shall be stated. p. 404.

APPEARANCES: Robert G. Mann, Bolden & Mann, Indianapolis, Indiana, for Appellant.

John J. Dillon, Attorney General of Indiana, Richard V. Bennett, Deputy Attorney General, for Appellee.

ARTERBURN, J.

This action was commenced by affidavit on two counts, charging the defendant with the criminal offense of procuring a female for a house of prostitution pursuant to Burns' Ind. Stat. Ann., § 10-4211. The defendant was found guilty under Count One and sentenced accordingly.

The appellant, in our opinion, has failed in many respects to comply with our rules with reference to the presentation of his brief. Rule 2-17(g) requires that a summary of the argument precede the major argument. Rule 2-17(h) requires that the items in the motion for a new trial relied upon as a basis for error shall be stated. The motion for a new trial is not set out at any place in the entire brief, and the specific item in the motion for a new trial is not set forth at the beginning of each point presented in the argument section of the brief. As a

matter of interest, we find the motion for a new trial in the transcript comprises 19 pages. We have said many times we are not required to search the record to find the alleged errors. In our opinion, this appeal should be dismissed for failure to comply with the very simple rules of this court.

Nevertheless, in the sense of trying to do justice, we have examined the poorly-prepared brief and have arrived at the following conclusions:

It is argued that the prosecuting attorney made improper remarks in his closing argument when he said that the appellant might have to serve two to ten years or might have to serve less than two years. The statute, Burns' § 10-4211, provides for an indeterminate sentence of two to ten years and a fine of not less than three hundred dollars and not to exceed one thousand dollars upon conviction. There is no showing of prejudice in this case by such a remark. Furthermore, no objections were made on the grounds now urged by the appellant at the time of the remarks. The alleged error was not saved for review. We do not believe the case cited by appellant, *Rowe v. State* (1968), —— Ind. —— [14 Ind. Dec. 516], 237 N.E.2d 576, is controlling in this situation. In that case the prosecution was arguing a lesser included offense did not have a sufficiently adequate or stiff penalty. In the case before us there was no lesser included offense involved. What the prosecution said is a matter of common knowledge, and we do not think it was prejudicial or inflammatory. No showing of that character is made.

It is next argued that the court erred in overruling the motion "objecting to jurisdiction." The motion asked that the case be remanded to the Criminal Court of Marion County for the reason that the Judge of the Hamilton Circuit Court, Edward F. New, Jr., and the chief trial deputy in Marion County, Leroy K. New, were brothers. However, the motion recites that the cause was assigned by the Circuit Court of Hamilton County to the Superior Court of Hamilton County before trial and was tried before Judge V. Sue Shields, as presiding judge of the Superior Court of Hamilton County. Burns' § 4-402 provides that the Circuit Judge may transfer cases to the Superior Court. We find no error in the respect urged.

It is also argued under Point 3 that the court erred in overruling a motion to have a psychiatric examination of Judy Kay Vickery, a prosecuting witness. However, the briefs do not set forth at any point that any objection was made to the witness testifying on the ground that she was mentally in-

competent as a witness when she took the stand. Therefore we find no point raised for our consideration with reference to the testimony of Judy Kay Vickery.

Finally, it is argued that the evidence is insufficient to support the verdict of the jury. The evidence, as set forth in the brief, appears to us to amply support the charge of procuring a female for a house of prostitution.

The evidence shows that the defendant met Judy Kay Vickery, a fifteen year old girl, at an apartment located at 2823 Sutherland Avenue. Shortly thereafter, the defendant and Miss Vickery left the apartment to get a soft drink. While they were having this soft drink, the defendant told Miss Vickery about Miss Ault, saying that she lived at his home and worked out of it as a prostitute. The defendant asked Miss Vickery if she would like to meet Miss Ault. The defendant and Miss Vickery then went to the defendant's home at 2838 Paris Avenue, where Miss Vickery was introduced to Miss Ault. Within a short time, the two women left the home and rode around in a car until they met some men. The men were brought back to the defendant's home where Miss Ault had sexual relations with the men while Miss Vickery watched. The men then paid Miss Ault. There was no evidence introduced to show that prior to her meeting with the defendant that Miss Vickery had been connected with prostitution in any way.

The next afternoon the defendant took Miss Vickery to a beauty parlor and to a store where he purchased for her a dress, shoes and underclothes for a total cost of about fifty dollars. That night Miss Vickery went with Miss Ault "to work on Meridian Street." Miss Vickery that night performed acts of prostitution for money in the defendant's home.

There is other evidence that corroborates and supports fully what has been stated. We find no error of the trial court presented to us in the briefs on this appeal.

The judgment of the trial court is affirmed.

DeBruler, C.J., and Hunter, J., concur.

Jackson and Givan, JJ., concur in result.

Appendix "b'

Judgment of the Court

" The Court now orders the defendant sentenced to the Indiana State Prison for not less than two nor more than ten years and fined in the sum of $600.00 and the costs of this action." (Tr. p. 100)